

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

BRENDA DAVIS and  
CLARENCE DAVIS,

Plaintiffs,

v.

CIVIL ACTION NO. 3:18-1415

DISH NETWORK, LLC

Defendant.

**ORDER**

This matter is before the Court *sua sponte*. On September 3, 2019, Defendant DISH Network, LLC (“DISH”) filed a Motion for Summary Judgment. ECF No. 35. On September 17, 2019, Plaintiffs Brenda Davis (“Mrs. Davis”) and Clarence Davis (“Mr. Davis”) filed a Response in Opposition. ECF No. 36. In their Response, Plaintiffs alleged that Mrs. Davis “received multiple calls from the number 877-839-0927 in April and May of 2018,” and that when she “answered these calls, a [DISH] representative was on the line.” *Id.* at 3. In its Reply, Defendant DISH submitted an affidavit from Joey L. Montano, its Business Operations Manager, declaring that “DISH does not own the ‘0927 number” and that “[i]f Plaintiff received a telephone call bearing the CIN 877-839-0927, DISH did not make the call.” *Reply Ex. N*, ECF No. 37-2, at 2. Defendant did not address ownership of the number in its original motion.


Rule 7.1(a)(7) of this district’s Local Rules of Civil Procedure permits the Court to grant leave for a party to file surreply memoranda. As a general matter, such leave may be appropriate where a party is “unable to contest matters presented to the court for the first time in [an] opposing party’s reply.” *Khory v. Meserve*, 268 F. Supp. 2d 600, 605 (D. Md. 2003). These matters include

new evidence. *See, e.g., United States v. Purdue Pharma L.P.*, No. 5:10-cv-01423, 2012 WL 12930668, at \*1 (S.D.W. Va. May 7, 2012). Here, Mr. Montano's affidavit represents new evidence that Plaintiffs have not been afforded the opportunity to contest.

The Court therefore **GRANTS** leave for Plaintiffs to file a surreply memorandum by **Monday, October 7, 2019**. Plaintiff's surreply is limited to addressing the ownership of the 877-839-0927 number, along with any authenticated evidence tending to demonstrate Defendant's association with it. The surreply will otherwise conform to Local Rule of Civil Procedure 7.1.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER:        October 2, 2019

  
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ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE